



Policy Brief

The ‘Law and Order Visa’: How the U-Visa Unites Law Enforcement and Immigrant Communities for Public Safety

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EXECUTIVE SUMMARY

The U nonimmigrant visa was created by Congress in 2000 to provide protection for victims of crimes and increase the noncitizen population’s reporting of criminal activity. To qualify for a U visa, a noncitizen must be the victim of a crime committed on U.S. soil and be willing to cooperate with law enforcement during the investigation and prosecution of the crime. Each year, 10,000 visas are offered to principal applicants, but the demand for visas is significantly higher, which has led to a backlog that now stands around 142,000 applications.

Critics of the U visa are concerned about the potential for fraud, but overall, the program has successfully promoted public safety, is well-received by local law enforcement, and has maintained reliable safeguards against fraud. This *Niskanen Policy Brief* examines the legal and academic literature on the U visa’s effectiveness in promoting cooperation between law enforcement and immigrant populations and offers policy recommendations to address the growing backlog that threatens to derail the program’s benefits.

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INTRODUCTION

For decades, U.S. law enforcement agencies have balanced two different priorities when interacting with the immigrant community: ensuring public safety for everyone and enforcing immigration laws. The promotion of public safety is enhanced with community involvement; however, enforcing immigration laws can often silence the foreign-national population. In order to help resolve this tension, Congress created the U nonimmigrant visa as part of the “Victims of Trafficking and Violence Protection Act” of 2000. U status¹ offers protected immigration status to noncitizens who are victims of crimes. Intended to alleviate fears that reporting a crime will lead to deportation, the U visa allows noncitizens to live and work in the United States for a period of four years, with the opportunity to apply for Lawful Permanent Resident (LPR) status after three years of holding the visa.

Noncitizens must meet several conditions in order to be eligible for U status. The petitioner must be a victim of a crime that occurred on U.S. soil and must have filed a report of that crime with local law enforcement. After filing a police report, a petitioner must complete and submit an I-918 form to U.S. Citizenship and Immigration Services (USCIS). Included in the form is the I-918 Supplement B form that requires a signature from a law enforcement official

certifying that the noncitizen was helpful during the investigation of the crime. The “certificate of helpfulness” is a check in the system to determine if crime reports are fabricated and to ensure U petitioners cooperate with law enforcement. Individuals authorized to sign U petitions include agents of any federal, state, or local law enforcement agency; prosecutors; judges; or representatives of another authority that has responsibility for the investigation or prosecution of criminal activity.²

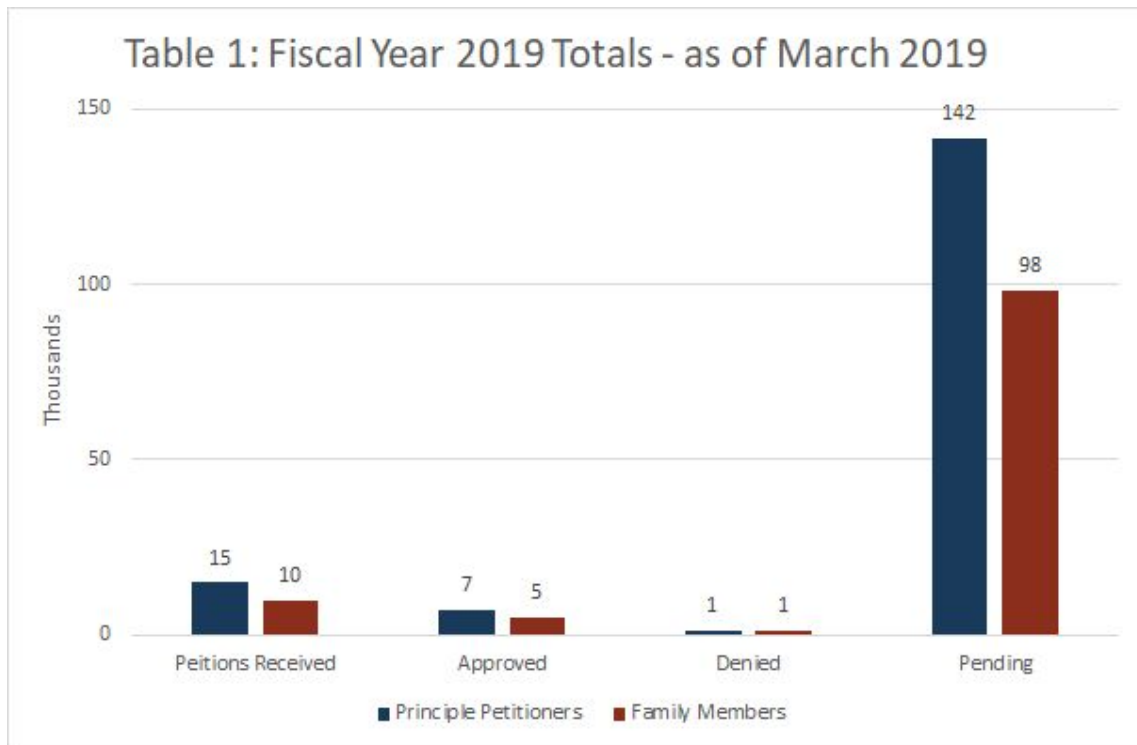
While the U visa originally focused on crimes such as domestic abuse, USCIS expanded the list of qualifying offenses to a total of 28, including crimes such as abduction, murder, and felonious assault.³ The final requirement is for petitioners to demonstrate they have sustained significant mental or physical injury as a result of the crime.⁴

When Congress created the U visa classification, it capped the number of visas that could be issued to principal petitioners at 10,000 per fiscal year. However, petitioners may file for derivative U status for spouses, children, parents, and unmarried siblings (U-2, U-3, U-4, and U-5). The number of derivative visas administered each year is uncapped. A 2012 survey by the National Immigrant Women’s Advocacy Project found that the average number of children included in U visa petitions was 2.28.⁵

Due to a high number of applicants, U visa approvals have consistently reached capacity by the first or second quarter of each fiscal year. The visa cap, coupled with the application requirements, has resulted in an ever-growing waitlist of pending applications that can take up to 15 years to be adjudicated.⁶ Eligible petitioners who submit an application after the cap has been reached are placed on the waitlist and receive a “deferred-action” status that allows them to apply for a work permit while they wait for U approval.⁷ However, the time individuals spend on deferred status does not count towards the necessary three years of residency to be green-card eligible.

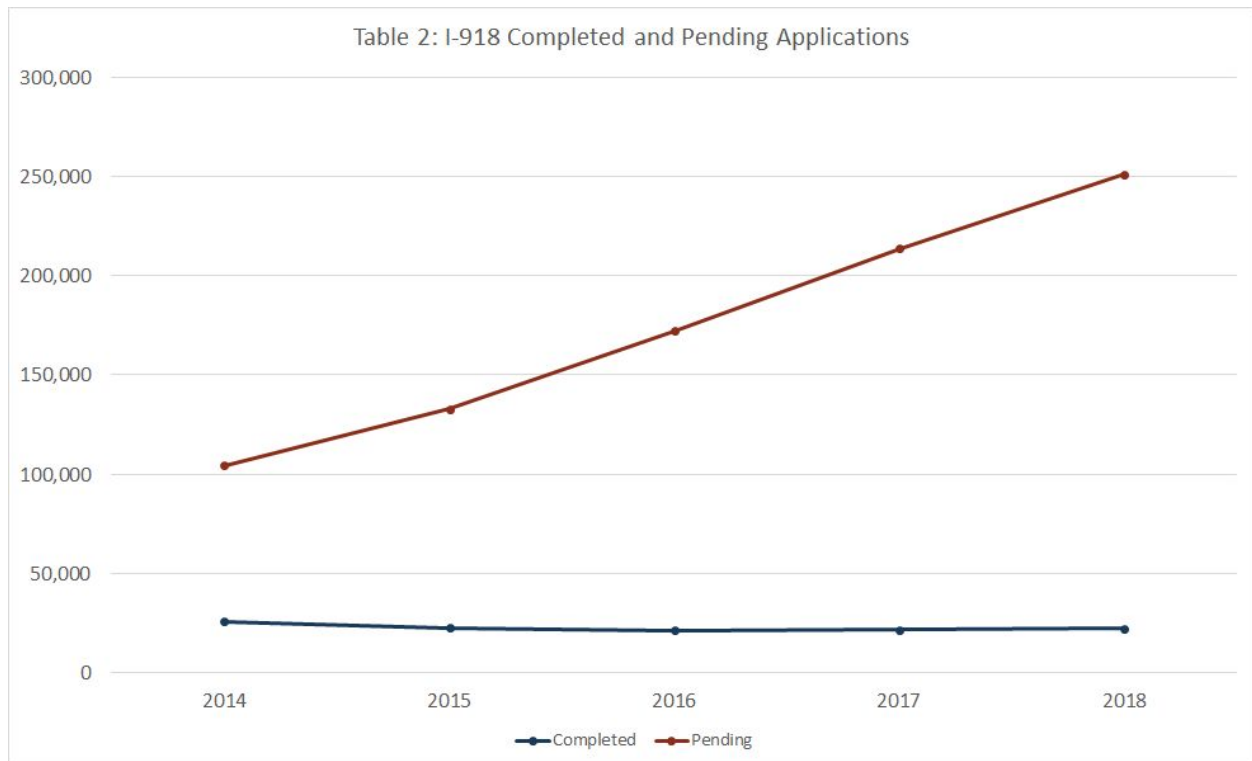
Data from the first two quarters of fiscal year 2019 shows that USCIS has approved a total of 7,053 principal visas out of the 14,878 visas received since October of 2018. The approved visas were accepted from both those received during the current fiscal year as well as from the backlog. After the first two quarters, the waitlist had grown by more than 3,000 applications.

Table 1 breaks down visa petitions by principal and family member based on available USCIS data for FY 2019.



As the backlog grows, the number of applicants has decreased. USCIS data fiscal years 2014-2018 shows that during this five-year period, there was a 13 percent decrease in the number of new U visa petitioners (including principal and family petitioners).⁸ From FY 2014 to FY 2015, the number of applications pending grew by over

30,000. A similar spike was observed between FY 2017 and FY 2018. Table 2 shows an inverse relationship between the number of completed applications and the increased backlog. As the wait time for pending applications grows, fewer U petitions are being completed.



Under the current administration, USCIS has been granted the power to summon noncitizens to court immediately upon denial of their visa application to begin deportation proceedings.⁹ Previously, immigration officers would send a notice of error or request for evidence to the petitioner as an indication of

a potential denial. This allowed visa applicants to obtain necessary third-party signatures or additional information before receiving an application decision.

Immigration lawyers are concerned the court appearance requirement and increased

backlog are deterring applicants from pursuing U status.¹⁰ A May 2019 survey of immigration advocates found that three out of four reported that their clients expressed concern about going to court because they feared retaliation from their abuser/offender as well as deportation by immigration enforcement.¹¹ Additionally, 52 percent of advocates reported working with clients who withdrew their civil or criminal case and failed to complete the U application.¹² If these fears continue to grow, we can expect to see a further decrease in the number of individuals willing to come forward and report crime, inhibiting law enforcement's ability to promote public safety.

APPLICATION BACKLOG

One primary factor aggravating processing delays is the application backlog. On average, U petitioners wait about two years just to receive a deferred-action notice and be placed on the official visa waitlist. Anecdotal evidence indicates the prewaitlist waiting time is growing. In January of 2018, USCIS announced it was still processing applications that had been filed in late 2014 — a waiting period of more than 3 years.¹³ During this prewaitlist limbo, there are no guaranteed protections for petitioners. Absent a deferred-action notice, the petitioner is still susceptible to deportation proceedings and not eligible for work authorization. This period of limbo contributes to immigrants'

unwillingness to apply for a U visa regardless of their eligibility.¹⁴ Noncitizens appear to be less likely to risk deportation by applying for U status when they know it will be years before their application is adjudicated.

A second factor is the required certification that petitioners must obtain from law enforcement. Prior to USCIS reviewing an application, petitioners have to obtain a signature on the I-918B form by a certifying agency. However, there are no requirements on certifying agencies to ensure when or how they respond to petitioners' requests. Individual police departments are able to determine their policies for U petitions, which creates an ambiguous process noncitizens have to navigate on a case-by-case basis. Some agencies, such as the Kansas City Police Department, will not sign a U certification if it has been more than five years since the crime was reported. Other police departments reported arbitrary reasons for denials, such as “the crime happened too long ago” or “the victim never testified in court despite helpfulness during the investigation.”¹⁵

A 2013 study by the University of North Carolina School of Law examined over 4,000 certification denials across 772 legal service providers in 49 states. This study attributed about 30 percent of denials to “overzealous scrutiny” by individual officers.¹⁶ While individual authorizing agents can act as

additional fraud checks on victims' claims, the lack of uniform guidelines for certification leaves petitioners at the mercy of arbitrary guidelines established by local agents.

BENEFITS TO LAW ENFORCEMENT

Several scholars have seen a decline among Latino immigrant populations in reporting of specific crimes, including domestic abuse. Houston, one of the fastest-growing immigrant communities in the country, saw a 42 percent decrease in the reporting of rape among Hispanic communities and a 13 percent decrease in reporting of violent crimes over one year.¹⁷ Conversely, the rate of reporting for non-Hispanic communities *increased* for both crimes during the same period. In Denver, overall crime reports from Latinos fell 12 percent during the first three months of 2017, while crime reporting from non-Latinos increased by 3.6 percent.¹⁸

A 2018 Human Rights Watch study, which was based on interviews with victims, law enforcement, and legal service providers around the country, found that law enforcement rely on the U visa as a tool that strengthens community relationships and promotes public safety.¹⁹ When vulnerable communities feel safer reporting, police departments develop a better understanding of criminal activity occurring within their jurisdictions. The more information that is

shared, the more comprehensive a strategy law enforcement can create to effectively target perpetrators. This boost of public trust allows community-oriented policing to increase cooperation and problem-solving among communities where trust is historically very low.²⁰ Additionally, law enforcement noted that the U visa program is also helpful for ensuring victims are able to remain in the country in order to testify against perpetrators. Prosecutors from Alameda County, California, and Boulder, Colorado, were able to successfully convict labor traffickers based on the testimony of their victims.²¹

In conjunction with the ACLU, the National Immigrant Women's Advocacy Project conducted interviews with more than 200 law enforcement officers across 23 states. It found that law enforcement reported it was more difficult to investigate domestic abuse, human trafficking, and sexual assault after immigrant cooperation with law enforcement decreased. The study also found that 71 percent of surveyed officers reported lack of trust and cooperation from immigrant victims as having an adverse impact on officers.²²

In addition to the benefit of promoting public safety, police detectives reported that the U visa has been beneficial in lowering recidivism rates, especially for crimes like domestic abuse. Domestic abuse victims are, on average, likely to return to their abusive partners at least five times before

permanently leaving.²³ If each return is followed by a call to police, officers can spend many hours and resources on the same case, which decreases their availability to assist other crime victims.²⁴ The U visa provides victims of domestic abuse access to important legal protections and resources, thereby decreasing the number of calls to law enforcement and the agency resources spent on one prolonged case.

POTENTIAL FOR FRAUD

Critics of the U visa argue the system is too lenient and allows individuals to commit fraud by alleging a crime occurred on U.S. soil as a means to obtain a green card. The wording of the eligibility requirements allows law enforcement to certify a noncitizen who “is likely to be helpful,” as opposed to just those who have been helpful.

The number of fraudulent U visa applications is so small, the Department of Homeland Security does not publish data on U visa fraud. Anti-fraud measures are embedded in the U process to ensure legitimate claims are adjudicated appropriately.

In 2017, the Department of Justice successfully prosecuted an Indiana immigration lawyer who pleaded guilty to defrauding USCIS and over 250 clients by filing fraudulent visa applications.²⁵ Joel Paul submitted the applications, including U visa applications, on behalf of his clients without their knowledge. In 2016, a similar fraud case

was prosecuted where several individuals and their immigration lawyer were convicted of attempting to commit both U visa fraud and marriage fraud.²⁶

While fraud is always possible within the immigration system, the wait time for petition approval makes U visas an unlikely pathway for immigration fraud. Growing application backlogs make it very improbable that an immigrant who reports a crime will receive protected status before several years have lapsed. Individuals who conspire to commit visa fraud are frequently seeking immediate solutions to threats of deportation, making the slow-moving nature of the U visa approval system an unlikely pathway.

The previous cases of immigration fraud included the involvement of immigration lawyers acting, in the instance of Joel Paul, without his clients’ permission. The process for applying to a U visa has embedded checks in the system, such as the certification of helpfulness, so that attorneys who falsify applications are easier to identify and prosecute.

Individual noncitizens who petition with a fabricated crime must be able to convince law enforcement their report is true. The authorizing officials act as a first check in the system to determine the veracity of a crime report. As the North Carolina study demonstrated, authorizing officials are more

likely to deny U petitioners — because they over-scrutinize the requirements on victims or hold arbitrary department policies on visa approvals — than to issue carte blanche determinations.

POLICY RECOMMENDATIONS

1. Require official review of the U visa program

The recent moratorium on certifying visa applications implemented by the head of the Wage and Hour Division (WHD) at the Department of Labor (DOL), demonstrates the need for an official review of the U visa program.²⁷ In June, the current WHD administrator, Cheryl Stanton, placed a moratorium on the approval of U visa petitions that had been approved by regional authorities and other DOL lawyers. Seven weeks later, the moratorium was lifted and replaced with new guidelines that prevent DOL investigators from certifying T or U visa applications without an existing investigation conducted by an outside agency.

This decision bucks the precedent of WHD being an independent certifier of U and T visa applications and one of the most expedient federal investigators into wage and labor exploitation.²⁸ Previously, WHD certifications would take anywhere from a few weeks to a few months, one of the

shortest processing times of any certifying agency. The WHD policy change will only add to the existing backlog and processing times, further disincentivizing eligible individuals from applying.

Because the visa program relies upon those who interact with crime victims first, the available data on the U petition process is scattered and heavily reliant upon anecdotes from legal service providers. Congress should conduct a review on the U visa program in order to establish how the visa is being administered by federal and state agencies and to understand areas of inefficiency.

2. Institute educational requirements for law enforcement

While federal guidelines define what a certifying agency is, there is no standardized educational program law enforcement must undergo to understand what the certification process is meant to accomplish.²⁹ Apart from the Department of Homeland Security resource materials explaining the I-918 forms, there is no central information hub for authorizing agencies to access for training or education about the U visa.

Instead, the visa program relies upon officers to exercise personal discretion in certifying U petitions. Legal scholars have noted that without uniform educational requirements, U

visa applications become a matter of geographical roulette.³⁰ Absent a centralized agency that is responsible for educating local law officers on the federal requirements, there is no way to prevent hawkish law enforcement from holding petitioners to requirements not mandated by federal law.³¹

3. Raise the cap on U visas

Given the number of individuals with valid U visa petitions that are stuck in the years-long backlog, Congress could relieve some of the systemwide strain by raising the annual U visa cap. Over the years, there have been several congressional attempts to raise the U visa cap. The “Gang of 8’s” immigration reform proposal of 2013 sought to expand the U visa program to an annual cap of 18,000 and in 2017, Rep. Julia Brownley (D-CA) proposed legislation to raise the cap to 40,000 visas per year.

An alternative statutory reform legal scholars recommend is offering immediate deferred-action status to individuals who have U applications pending. While this would not alleviate the backlog, it would allow individuals access to protections while awaiting visa approval. This ensures victims’ continued cooperation with law enforcement throughout the prosecution process. Numerous immigration lawyers are noting a hesitancy from their clients over applying for U status because of the vulnerable position it

places them in while they wait for their spot in the backlog queue. When an immigrant mother is concerned about deportation and separation from her American-born child, that woman is unlikely to report a crime committed against her. Raising the U visa cap would demonstrate a commitment by Congress to promote public safety by encouraging immigrant victims to access the legal system.

CONCLUSION

A visa intended to promote public safety cannot work when the system is overwhelmed with backlogged applications. The U visa has proven to be a useful tool to assist law enforcement in the investigation and prosecution of crimes. However, severe backlogs and administrative individualism threaten the viability of the U visa as the backlog continues to grow.

The priority of promoting law and order is being undermined by the neglect of valuable tools. Congress should seriously consider how to effectively utilize the U visa program to increase cooperation between law enforcement and vulnerable communities.

ENDNOTES

1. U visas and U status will be used interchangeably in this paper.
2. [8 U.S. Code 214.14](#)
3. United States Citizenship and Immigration Services, "[Victims of Criminal Activity: U Nonimmigrant Status](#)."
4. *Ibid.*
5. Leslye Orloff, et al., "[U Visa Victims and Lawful Permanent Residency](#)," *National Immigrant Women's Advocacy Project*, September 6, 2012.
6. Imogene Mankin, "Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosures Perpetuate Further Violence Against Undocumented Victims of Domestic Abuse," *Berkeley La Raza Law Journal*, May 2017, 40-64.
7. [U Nonimmigrant Status \(U Visas\)](#), *The Law Offices of Grinberg & Segal*.
8. U.S. Citizenship and Immigration Services, "[2018 USCIS Statistical Annual Report](#)," 2018.
9. Zolan Kanno-Youngs, "[Trump's Immigration Crackdown has Blunted Police Efforts to be Tough on Crime](#)," *New York Times*, May 14, 2019.
10. *Ibid.*
11. Asian Pacific Institute on Gender-Based Violence, "[Immigrant Survivors Fear Reporting Violence](#)," May 2019.
12. *Ibid.*
13. Mankin, "Abuse-in(g) the System."
14. Leslye Orloff, Krisztina E. Szabo & Spencer Cantrell, "[Comparison Chart of U visa, T Visa, Violence Against Women Act \(VAWA\) Self-Petition, Special Immigrant Juvenile Status \(SIJS\), and Deferred Action for Childhood Arrivals \(DACA\)](#)," *National Immigrant Women's Advocacy Project*, July 2015.
15. Jean Abreu, Sidney Fowler, Nina Holstberry et al., "[The Political Geography of the U Visa: Eligibility as a Matter of Locale](#)," *UNC School of Law Immigration/Human Rights Policy Clinic*, 2014.
16. *Ibid.*
17. Houston Public Media Staff, "[Houston Police Department Wants to Reassure the Hispanic Community](#)," *Houston Public Media*, April 6, 2017.
18. Rob Arthur, "[Latinos in Three Cities are Reporting Fewer Crimes Since Trump Took Office](#)," *FiveThirtyEight*, May 18, 2017.
19. Sara Darehshori, "[Immigrant Crime Fighters](#)," *Human Rights Watch*, July 3, 2018.
20. Stacey Ivie & Natalie Nanasi, "[The U Visa: An Effective Resource for Law Enforcement](#)," *FBI Law Enforcement Bulletin*, October 2009.
21. Darehshori, "[Immigrant Crime Fighters](#)."
22. American Civil Liberties Union, "[Freezing Out Justice](#)," 2018.
23. Ivie & Nanasi, "[The U Visa: An Effective Resource for Law Enforcement](#)."
24. *Ibid.*
25. Department of Justice, "[Immigration Attorney Pleads Guilty to Fraud Scheme and Identity Theft in Relation to Visa Applications](#)," November 30, 2017.
26. The Economic Times, "[Several Indian indicted in fake marriages and U-visa fraud cases in US](#)," May 20, 2016.
27. Ben Penn, "[Human Trafficking Victims Blocked from Visas by Trump Wage Boss](#)," *Bloomberg Law*, June 24, 2019.
28. *Ibid.*
29. Vera Justice Institute, "[How Law Enforcement is Using the U-Visa](#)," 2011.
30. Jason Cade & Meghan L. Flanagan, "Five Steps to a Better U: Improving the Crime Fighting Visa," *Richmond Public Interests Law Review*, March 2018, 86-115.
31. *Ibid.*